

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**IN RE: PHILIPS RECALLED CPAP, : BI-
LEVEL PAP, AND MECHANICAL :
VENTILATORPRODUCTSLITIGATION**

Master Docket: Misc. No. 21-mc-1230-JFC

MDL No. 3014

This Document Relates to:

**George Cundiff, heirs to his body, David
Edwards Cundiff, Christa Renee Cundiff,
Jane Cundiff Jr., and as representatives of
the Estate of George Cundiff**

**SHORT FORM COMPLAINT FOR
PERSONAL INJURIES, DAMAGES,
AND DEMAND FOR JURY TRIAL**

:

Plaintiff(s) incorporate(s) by reference the Amended Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial filed in *In re Philips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Products Litigation*, MDL No. 3014, Master Docket Misc. No. 21-mc-1230 (the “Master Long Form Complaint”). This Short Form Complaint adopts the allegations, claims, and requested relief as set forth in the Master Long Form Complaint. As necessary herein, Plaintiff(s) may include: (a) additional claims and allegations against Defendants; and/or (b) additional claims and allegations against other Defendants not listed in the Master Long Form Complaint.

Plaintiff(s) further allege(s) as follows:

I. DEFENDANTS

1. Plaintiff(s) name(s) the following Defendants in this action:

X Koninklijke Philips N.V.

X Philips North America LLC.

X Philips RS North America LLC.

X Philips Holding USA Inc.

X Philips RS North America Holding Corporation.

X Polymer Technologies, Inc.

X Polymer Molded Products LLC.

II. PLAINTIFF(S)

2. Name of Plaintiff(s):

3.

George Cundiff, heirs to his body, David Edward Cundiff, Christina Renee Cundiff, Lauren Jane Cundiff Lami, and George Edward Cundiff Jr., and as representatives of the Estate of George Cundiff

4. Name of spouse of Plaintiff (if loss of consortium claim is being made):
NONE

5. Name and capacity (*i.e.*, executor, administrator, guardian, conservator, etc.) of other Plaintiff, if any:

6.

George Cundiff, heirs to his body, David Edward Cundiff, Christina Renee Cundiff, Lauren Jane Cundiff Lami, and George Edward Cundiff Jr, and as representatives of the Estate of George Cundiff

7. State(s) of residence of Plaintiff(s) (if the Recalled Device user is deceased, residence at the time of death):

Texas

DESIGNATED FORUM

8. Identify the forum (United States District Court and Division) in which the Plaintiff would have filed in the absence of direct filing:

Untied States District Court for Western Texas- Waco Division

III. USE OF A RECALLED DEVICE

9. Plaintiff used the following Recalled Device(s):

☐ E30 (Emergency Use Authorization

☐ DreamStation ASV

☐ DreamStation ST, AVAPS

☐ SystemOne ASV4

☐ C-Series ASV

☐ C-Series S/T and AVAPS

☐ OmniLab Advanced +

☐ SystemOne (Q-Series)

☐ DreamStation

☐ DreamStation Go

☐ Dorma 400

☐ Dorma 500

☐ REMstar SE Auto

☐ Trilogy 100

☐ Trilogy 200

☐ Garbin Plus, Aeris, LifeVent

☐ A-Series BiPAP Hybrid A30 (not marketed in U.S.)

☐ A-Series BiPAPV30 Auto

☐ A-Series BiPAP A40

☐ A-Series BiPAP A30

☒ Other Philips Respironics Device; if other, identify the model:

REMstar Auto 550P

REMstar Auto A-Flex System On 60 Series

Dreamstation , BiPAP S/T

INJURIES

10. Plaintiff alleges the following physical injuries as a result of using a Recalled Device together with the attendant symptoms and consequences associated therewith:

- ☐ COPD (new or worsening)
- ☐ Asthma (new or worsening)
- ☐ Pulmonary Fibrosis
- ☐ Other Pulmonary Damage/Inflammatory Response
- ☐ ☒ Cancer Acute Myeloid Leukemia (specify cancer)
- ☐ Kidney Damage
- ☐ Liver Damage
- ☐ Heart Damage
- ☒ Death
- ☐ Other (specify) _____

IV. CAUSES OF ACTION/DAMAGES

11. As to Koninklijke Philips N.V., Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- X Count I: Negligence
- X Count II: Strict Liability: Design Defect
- X Count III: Negligent Design
- X Count IV: Strict Liability: Failure to Warn
- X Count V: Negligent Failure to Warn

- X Count VI: Negligent Recall
- X Count VII: Battery
- X Count VIII: Strict Liability: Manufacturing Defect
- X Count IX: Negligent Manufacturing
- X Count X: Breach of Express Warranty
- X Count XI: Breach of the Implied Warranty of Merchantability
- X Count XII: Breach of the Implied Warranty of Usability
- X Count XIII: Fraud
- X Count XIV: Negligent Misrepresentation
- X Count XV: Negligence Per Se
- X Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
- X Count XVII: Unjust Enrichment
- Count XVIII: Loss of Consortium
- X Count XIX: Survivorship and Wrongful Death
- Count XX: Medical Monitoring
- X Count XXI: Punitive Damages
- Count XXII: Other [specify below]

12. As to Philips North America LLC, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- X Count I: Negligence
- X Count II: Strict Liability: Design Defect
- X Count III: Negligent Design

X Count IV: Strict Liability: Failure to Warn

X Count V: Negligent Failure to Warn

X Count VI: Negligent Recall

X Count VII: Battery

X Count VIII: Strict Liability: Manufacturing Defect

X Count IX: Negligent Manufacturing

X Count X: Breach of Express Warranty

X Count XI: Breach of the Implied Warranty of Merchantability

- X Count XII: Breach of the Implied Warranty of Usability
- X Count XIII: Fraud
- X Count XIV: Negligent Misrepresentation
- X Count XV: Negligence Per Se
- X Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
- X Count XVII: Unjust Enrichment
- Count XVIII: Loss of Consortium
- X Count XIX: Survivorship and Wrongful Death
- Count XX: Medical Monitoring
- X Count XXI: Punitive Damages
- Count XXII: Other [specify below]

13. As to Philips RS North America LLC, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- X Count I: Negligence
- X Count II: Strict Liability: Design Defect
- X Count III: Negligent Design
- X Count IV: Strict Liability: Failure to Warn
- X Count V: Negligent Failure to Warn
- X Count VI: Negligent Recall
- X Count VII: Battery
- X Count VIII: Strict Liability: Manufacturing Defect
- X Count IX: Negligent Manufacturing

- X Count X: Breach of Express Warranty
- X Count XI: Breach of the Implied Warranty of Merchantability
- X Count XII: Breach of the Implied Warranty of Usability
- X Count XIII: Fraud
- X Count XIV: Negligent Misrepresentation
- X Count XV: Negligence Per Se
- X Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
- X Count XVII: Unjust Enrichment
- _____ Count XVIII: Loss of Consortium
- X Count XIX: Survivorship and Wrongful Death
- _____ Count XX: Medical Monitoring
- X Count XXI: Punitive Damages
- _____ Count XXII: Other [specify below]

14. As to Philips Holding USA Inc., Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- X Count I: Negligence
- X Count II: Strict Liability: Design Defect
- X Count III: Negligent Design
- X Count IV: Strict Liability: Failure to Warn
- X Count V: Negligent Failure to Warn
- X Count VI: Negligent Recall
- X Count VII: Battery

- ☒ Count VIII: Strict Liability: Manufacturing Defect
- ☒ Count IX: Negligent Manufacturing
- ☒ Count X: Breach of Express Warranty
- ☒ Count XI: Breach of the Implied Warranty of Merchantability
- ☒ Count XII: Breach of the Implied Warranty of Usability
- ☒ Count XIII: Fraud
- ☒ Count XIV: Negligent Misrepresentation
- ☒ Count XV: Negligence Per Se
- ☒ Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
- ☒ Count XVII: Unjust Enrichment
- ☐ Count XVIII: Loss of Consortium
- ☒ Count XIX: Survivorship and Wrongful Death
- ☐ Count XX: Medical Monitoring
- ☐ Count XXI: Punitive Damages
- ☐ Count XXII: Other [specify below]

15. As to Philips RS North America Holding Corporation, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

- ☒ Count I: Negligence
- ☒ Count II: Strict Liability: Design Defect
- ☒ Count III: Negligent Design
- ☒ Count IV: Strict Liability: Failure to Warn
- ☒ Count V: Negligent Failure to Warn

- X Count VI: Negligent Recall
- X Count VII: Battery
- X Count VIII: Strict Liability: Manufacturing Defect
- X Count IX: Negligent Manufacturing
- X Count X: Breach of Express Warranty
- X Count XI: Breach of the Implied Warranty of Merchantability
- X Count XII: Breach of the Implied Warranty of Usability
- X Count XIII: Fraud
- X Count XIV: Negligent Misrepresentation
- X Count XV: Negligence Per Se
- X Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
- X Count XVII: Unjust Enrichment
- _____ Count XVIII: Loss of Consortium
- X Count XIX: Survivorship and Wrongful Death
- _____ Count XX: Medical Monitoring
- X Count XXI: Punitive Damages

_____ Count XXII: Other [specify below]

13. As to Polymer Technologies, Inc., Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

X_____ Count I: Negligence

X_____ Count II: Strict Liability: Design Defect

X_____ Count III: Negligent Design

X_____ Count IV: Strict Liability: Failure to Warn

X_____ Count V: Negligent Failure to Warn

X_____ Count VIII: Strict Liability: Manufacturing Defect

X_____ Count IX: Negligent Manufacturing

X_____ Count XIII: Fraud

X_____ Count XIV: Negligent Misrepresentation

X_____ Count XVII: Unjust Enrichment

_____ Count XVIII: Loss of Consortium

X_____ Count XIX: Survivorship and Wrongful Death

_____ Count XX: Medical Monitoring

X_____ Count XXI: Punitive Damages

_____ Count XXII: Other [specify below]

14. As to Polymer Molded Products LLC, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

X_____ Count I: Negligence

X_____ Count II: Strict Liability: Design Defect

- X Count III: Negligent Design
- X Count IV: Strict Liability: Failure to Warn
- X Count V: Negligent Failure to Warn
- X Count VIII: Strict Liability: Manufacturing Defect
- X Count IX: Negligent Manufacturing
- X Count XIII: Fraud
- X Count XIV: Negligent Misrepresentation
- X Count XVII: Unjust Enrichment
- _____ Count XVIII: Loss of Consortium
- X Count XIX: Survivorship and Wrongful Death
- _____ Count XX: Medical Monitoring
- X Count XXI: Punitive Damages
- _____ Count XXII: Other [specify below]

15. If additional claims against the Defendants identified in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial are alleged above, the additional facts, if any, supporting these allegations must be pleaded. Plaintiff(s) assert(s) the following additional factual allegations against the Defendants identified in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial: NONE

16. Plaintiff(s) contend(s) that additional parties may be liable or responsible for Plaintiff(s)' damages alleged herein. Such additional parties, who will be hereafter referred to as Defendants, are as follows (must name each Defendant and its citizenship):NONE
17. Plaintiff(s) assert(s) the following additional claims and factual allegations against other Defendants named in Paragraph 16 above:NONE

WHEREFORE, Plaintiff(s) pray(s) for relief and judgment against Defendants and all such further relief that this Court deems equitable and just as set forth in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial and any additional relief to which Plaintiff(s) may be entitled.

Date: December 12,2022

Respectfully Submitted,

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